

§ 58-10-245. Requirements for audit committees.

(a) This section shall not apply to foreign or alien insurers licensed in this State or an insurer that is a SOX-compliant entity or a direct or indirect wholly owned subsidiary of a SOX-compliant entity.

(b) The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work. Each accountant shall report directly to the audit committee.

(c) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection (f) of this section and G.S. 58-10-190(3).

(d) In order to be considered independent for purposes of this section, a member of the audit committee shall not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary of the entity. However, if North Carolina law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(e) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the Commissioner, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(f) To exercise the election of the controlling person to designate the audit committee, the ultimate controlling person shall provide written notice of the affected insurers to the Commissioner. Notification shall be made timely before the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the Commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(g) Reports From Accountant.

(1) The audit committee shall require the accountant that performs for an insurer any audit required by this Part to timely report to the audit committee in accordance with the requirements of "Statement on Auditing Standards No. 61 of the AICPA Professional Standards, Communication with Audit Committees," or its replacement, including all of the following:

- a. All significant accounting policies and material permitted practices.
- b. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant.
- c. Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(2) If an insurer is a member of an insurance holding company system, the reports required by subdivision (1) of subsection (g) of this section may be provided to the audit committee on an aggregate basis for insurers in the

holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(h) The proportion of independent audit committee members shall meet or exceed the following criteria:

<u>Prior Calendar Year Direct Written and Assumed Premiums</u>		
<u>\$0 – \$300,000,000</u>	<u>Over \$300,000,000 – \$500,000,000</u>	<u>Over \$500,000,000</u>
No minimum requirements.	Majority (50% or more) of members shall be independent.	Supermajority of members (75% or more) shall be independent.

The Commissioner shall require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a risk-based capital action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer. The Commissioner may order any insurer with less than five hundred million dollars (\$500,000,000) in prior year direct written and assumed premiums to structure its audit committee with at least a supermajority of independent audit committee members. Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(i) An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than five hundred million dollars (\$500,000,000) may apply to the Commissioner for a waiver from the requirements in this section based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states in which it is licensed or doing business and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format. (2009-384, s. 1.)